NEW JERSEY LAW REVISION COMMISSION

Draft Tentative Report Addressing the New Jersey First Act’s Residency Requirement’s Application to Unpaid Volunteers

June 20, 2024

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” N.J.S. 1:12A-8.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than August 20, 2024.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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Project Summary

The New Jersey First Act ("NJFA") establishes a state residency requirement for every person holding an office, employment, or position within state or local government. The NJFA also authorizes New Jersey citizens to seek the ouster of individuals covered by the residency requirement who fail to reside in New Jersey after a 365-day grace period.

In Kratovil v. Angelson, an action brought by the editor and co-founder of a New Brunswick-based newspaper, the Superior Court considered the question of whether unpaid volunteers — in this case, members of the Rutgers University Board of Governors — are subject to the residency requirement of the NJFA. After noting ambiguities in the statute and evaluating the relevant statutory provisions and their history, the Court concluded that the NJFA residency requirement should not apply to unpaid volunteers such as the Rutgers Board of Governors.

Kratovil also addressed a second ambiguity in the NJFA. Specifically, whether the NJFA allows the filing of a complaint to seek ouster within one year of any 365-day period in which an individual fails to meet the residency requirement, or whether ouster can only be sought within one year of a single 365-day period. Ultimately, the Court found that the legislative use of the word "any" means that ouster can be sought for any 365-day period, even if that leaves certain individuals vulnerable to residency challenges for many years.

The Commission proposes modifications to N.J.S. 52:14-7(a) that are intended to clarify that the New Jersey First Act’s residency requirement does not apply to unpaid volunteers as held in Kratovil v. Angelson.

Statutes Considered

N.J.S. 52:14-7(a) provides in relevant part that:

Every person holding an office, employment, or position

(1) in the Executive, Legislative, or Judicial Branch of this State, or

(2) with an authority, board, body, agency, commission, or instrumentality of the State including any State college, university, or other higher

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1 Preliminary research and drafting for this memorandum was conducted by Christopher Camaj, Esq., as a pro bono volunteer with the N.J. Law Revision Comm’n during the Summer and Fall of 2023. Mr. Camaj’s work was updated and supplemented by Carol Disla-Roa.

2 N.J. STAT. ANN. § 52:14-7(a) (West 2024).

3 N.J. STAT. ANN. § 52:14-7(d) (West 2024).


5 Id. at 520.

6 Id. at 498.

7 Id. at 501 – 502.
educational institution, and, to the extent consistent with law, any interstate agency to which New Jersey is a party, or

(3) with a county, municipality, or other political subdivision of the State or an authority, board, body, agency, district, commission, or instrumentality of the county, municipality, or subdivision, or

(4) with a school district or an authority, board, body, agency, commission, or instrumentality of the district,

shall have his or her principal residence in this State and shall execute such office, employment, or position.

This residency requirement shall not apply to any person: (a) who is employed on a temporary or per-semester basis as a visiting professor, teacher, lecturer, or researcher by any State college, university, or other higher educational institution, or county or community college, or in a full or part-time position as a member of the faculty, the research staff, or the administrative staff by any State college, university, or other higher educational institution, or county or community college, that the college, university, or institution has included in the report required to be filed pursuant to this subsection; (b) who is employed full-time by the State who serves in an office, employment, or position that requires the person to spend the majority of the person's working hours in a location outside of this State; or (c) an officer of the waterfront commission of New York harbor, employed by the commission on the effective date of P.L.2017, c.324 (C.32:23-229 et al.), who seeks to be transferred to the Division of State Police in the Department of Law and Public Safety pursuant to section 4 of P.L.2017, c.324 (C.53:2-9)…. 8

N.J.S. 52:14-7(d) provides that:

Any person holding or attempting to hold an office, employment, or position in violation of this section shall be considered as illegally holding or attempting to hold the same; provided that a person holding an office, employment, or position in this State shall have one year from the time of taking the office, employment, or position to satisfy the requirement of principal residency, and if thereafter such person fails to satisfy the requirement of principal residency as defined herein with respect to any 365-day period, that person shall be deemed unqualified for holding the office, employment, or position. The Superior Court shall, in a civil action in lieu of prerogative writ, give judgment of ouster against such person, upon the complaint of any officer or citizen of the State, provided that any such complaint

8 N.J. STAT. ANN. § 52:14-7(a) (West 2024) (emphasis added).
shall be brought within one year of the alleged 365-day period of failure to have his or her principal residence in this State.\textsuperscript{9}

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\textbf{Legislative History of N.J.S. N.J.S. 52:14-7}

The NJFA’s residency requirement originally applied to “every person holding office in this state.”\textsuperscript{10} In 1986, however, “following the . . . reconfirmation debate over the residency of then-Chief Justice Robert N. Wilentz[,]” the NJFA was expanded to require in-state residency for “[t]he Governor . . . the Legislature, the head of each principal department of the Executive Branch of State government, and every Justice of the Supreme Court, judge of the Superior Court, and judge of any inferior court established under the laws of this State.”\textsuperscript{11}

In 2011, the NJFA was expanded again in apparent response to New Jersey’s slow recovery from the 2008 recession, and in the hopes of boosting employment in the State.\textsuperscript{12} The original language of the NJFA which applied to, “every person holding office in this state[,]” “proved imprecise and difficult to apply over time.”\textsuperscript{13} Accordingly, the revisions that took effect in 2011 applied the residency requirement to “[e]very person holding an office, employment, or position” in state or local government, including school districts.\textsuperscript{14}

\textbf{Background}

Charles J. Kratovil, editor and co-founder of \textit{New Brunswick Today}, filed a pro se complaint on June 11, 2018, against members of the Rutgers Board of Governors, seeking their ouster for violation of the NJFA’s residency requirement.\textsuperscript{15} He contended that, for at least a year before filing the complaint, the members of the Board failed to maintain a principal residence in New Jersey.\textsuperscript{16}

The defendants filed a motion to dismiss, which was denied.\textsuperscript{17} Thereafter, Rutgers filed a motion to intervene, which was granted.\textsuperscript{18} The parties then filed cross-motions for summary judgment.\textsuperscript{19} After considering this issue of first impression, the Court ultimately granted the

\textsuperscript{9} N.J. STAT. ANN. § 52:14-7(d) (West 2024) (emphasis added).
\textsuperscript{10} Kratovil at 496.
\textsuperscript{11} Id. at 495-6 (referencing the 1986 expansion of the previous NJFA following a public pledge to reside in state from then-Chief Justice Robert N. Wilentz).
\textsuperscript{12} Id. at 495; see also Governor’s Veto Statement to S. 1730 (2011) (stating “I commend the sponsors for their efforts to increase employment opportunities for New Jersey residents, by ensuring that citizens throughout the State enjoy access to public positions in their communities.”) (emphasis added).
\textsuperscript{13} Id. at 496.
\textsuperscript{14} Id.
\textsuperscript{15} Id. at 494.
\textsuperscript{16} Id.
\textsuperscript{17} Id.
\textsuperscript{18} Id.
\textsuperscript{19} Id.
motion in favor of the defendants.\textsuperscript{20}

The Court found that the statute of limitations contained within the statute allowed Kratovil to seek the ouster within one-year of \textit{any} 365-day period when those covered by the statute failed to meet the residency requirement.\textsuperscript{21} It also determined, however, that the residency requirement does not apply to unpaid volunteers such as members of the Rutgers Board of Governors.\textsuperscript{22}

\textbf{Analysis}

A brief summary of the Court’s consideration of the applicability of the residency requirement to volunteers and the timing of relief pursuant to the statute follows.

\textit{A. Applicability to Volunteers}

The \textit{Kratovil} Court found that the text of the statute containing the residency requirement, specifically the meaning of “office, employment, or position,” did not compel a clear and unambiguous result.\textsuperscript{23}

After noting its “delicate task of divining legislative intent without overt assurance that the Legislature contemplated application of the NJFA to unpaid volunteers,”\textsuperscript{24} the Court explained that while the words chosen by the Legislature are expansive, “the fact that the [NJFA] expressly covers employees of boards and State universities does not help answer the question of whether … [it] covers unpaid volunteer roles.”\textsuperscript{25} Boards may employ members or other administrative staff; therefore, the Court could not infer that the inclusion of “board[s] … of the State” is intended to cover unpaid volunteers.\textsuperscript{26} The Court also noted that the members of the Rutgers Board of Governors are statutorily prevented from “receiving remuneration for [their] services” under \textsc{n.j.s.} 18A:65-17, and that they shall not be compensated for their services except for reimbursement of reasonable expenses incurred in rendering their services under \textsc{n.j.s.} 18A:65-20.\textsuperscript{27}

The Court explained that the words “employment” and “office” (although perhaps less clearly than “employment”) exclude unpaid volunteers and refer only to paid positions.\textsuperscript{28} The word “position” is broader and could plausibly include unpaid work, but the more plausible

\begin{footnotesize}
\textsuperscript{20} Id.
\textsuperscript{21} Id. at 502
\textsuperscript{22} Id. at 520.
\textsuperscript{23} Id. at 504.
\textsuperscript{24} Id. at 504.
\textsuperscript{25} Id. at 500.
\textsuperscript{26} Id. at 510.
\textsuperscript{27} Id. at 504; \textsc{n.j. stat. ann.} § 18A:65-17 to –20 (West 2024); see also \textit{id.} at 518 (noting that some board members are paid “such as the State Parole Board, the Board of Public Utilities, and the New Jersey Board of Directors of Horizon Blue Cross and Blue Shield,” and that the act also covers employees hired by any board to assist them in exercising their duties).
\textsuperscript{28} Id.
\end{footnotesize}
interpretation is that “position” also means paid positions unless otherwise stated. Other sections of the NJFA define “any person holding public office, position or employment” as “employees” who are paid. And many provisions of civil service statutes use the word “position” as synonymous with “job,” regulating “position” holders as employees.

The Court also noted that then-Governor Christie and the State Senate appointed and confirmed three of the four member-defendants of the Rutgers Board of Governors shortly after adopting the NJFA – with the knowledge that these individuals resided outside of New Jersey and had no intent to change their principal residences. Thus, “it reasonably can be presumed that the Senators and Governor never intended” for the residency requirement to reach unpaid volunteers like the Rutgers Board of Governors' members.

The Court cited case law indicating that the terms office, employment, and position had raised interpretive challenges in other contexts, and supporting the conclusion that the terms do not include unpaid volunteers. The court in Pastore v. Cnty. of Essex concluded that the words “office, position or employment,” in N.J.S. 2C:51-2, were used interchangeably to refer to all public employees. In Mastrobattista v. Essex Cnty Park Comm’n, the court indicated that the statutory language extending to persons who hold an “office, position or employment” was “included out of an excess of caution” and rejected any distinction between the three terms. Finally, the case of Sahli v. Woodbine Bd. of Educ. discussed that the words “office, position or employment” could be subject to varying interpretations, and the court in that case found the word “position” synonymous with “employee.”

After noting that the Legislature did not define the terms “office, employment, or position” and that the meanings of these terms were ambiguous, the Court considered evidence of legislative intent and determined that various sources supported the conclusion that the Legislature intended for the NJFA to improve economic conditions in the State. The Court referred to then-Senator Norcross’s statement that “[i]f you want a paycheck from New Jersey taxpayers, you should live here and pay your taxes here” and to the statement by then-Governor Christie that “[t]his legislation would require that public employees obtain a principal residence in New Jersey within one year of beginning their public service.”

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29 Id. at 511.
30 Id. at 512.
31 Id. at 507.
32 Id. at 517.
33 Id. at 517 – 18.
34 Id. at 512.
35 Id. at 512 – 13, citing Pastore v. Cnty. of Essex, 237 N.J. Super. 371, 376 (App. Div. 1989); see also Id. at 518 (stating that noscitur a sociis applies here “to associated words that are given similar meaning”).
38 Id. at 514.
39 Id. citing Jason Rindosh, Comment, Continuing Residency Requirements: Questioning Burdens on Public Employment in New Jersey, 42 Seton Hall L. Rev. 1635, 1661 n. 172 (2012).
40 Governor’s Veto Statement to S. 1730 (2011) (emphasis added).
The Court referenced the reasoning in a detailed journal article that “the primary legislative rationale . . . was to better ensure that the funds [New Jersey]’s state and local governments paid in salaries to public employees stayed in [New Jersey] and contributed to the state’s own economy.”41 The Court further noted that the Legislature’s intent was “underscored by the timing of the Act’s passage, which followed the financial meltdown of 2008 when the Legislature was interested in adopting measures to boost the state’s economic recovery from the recession....[with] a desire to increase employment opportunities for New Jersey residents.”42

The Court also reviewed the legislative history of the statute just before it became the NJFA.43 There, the Court found comments from different legislative committees in 2010, which indicated an intent to cover employees and not unpaid volunteers.44 In addition to this history, the Court noted that the committee created by the Act to review exemptions refers to itself as the “Employee Residency Review Committee.”45

The Court ultimately concluded that the NJFA “should not…. reach unpaid volunteers,” including the Rutgers Board of Governors who reside outside of New Jersey.46

B. Timing

The Kratovil case also addressed a second ambiguity in the NJFA. Specifically, that the NJFA provides a 365-day period for a person living out of state to comply with the residency requirement, and then permits any State resident to file a claim for ouster “within one year of the alleged 365-day period of [noncompliance].”47 This case concerned the one-year ouster window and whether it closed or remained open following every 365-day period of continued noncompliance, under the phrase “any 365-day period”.48

Angelson argued that Kratovil’s interpretation of N.J.S. 52:14-7(d), allowing for rolling/ successive 365-day periods, rather than a single 365-day period, would leave noncomplying individuals vulnerable to multiple residency attacks, “[in contrast to] general

41 Kratovil at 515, citing Rindosh, 42 Seton Hall L. Rev. at 1661.
42 Id. at 496, citing Governor's Veto Message to S. 1730 (2011).
43 Id. at 516.
44 Id. citing Statement to S. Comm. Substitute for S. 1730 (May 13, 2010); Statement of A. State Gov't Comm. to A. 2478 (Dec. 9, 2010) (stating in reference to proposed amendments that “a person employed on the effective date of this bill who does not have his or her principal residence in this State on that effective date will not be subject to the residency requirement while the person continues to hold office, employment, or position without a break in public service of greater than seven days”)(emphasis added).
45 Id.
46 Id. at 520; but see Id. at 535 (here the court addresses the Contracts Clause issue in this case finding that,”[even] if the NJFA cover[ed] unpaid volunteers, it must nevertheless not be applied to the Rutgers Board of Governors because such application would run afoul of the Contract Clause and the Rutgers Charter”).
47 N.J. STAT. ANN. § 52:14-7(d) (West 2024).
48 Kratovil at 498; N.J. STAT. ANN. § 52:14-7(d).
notions of repose.” In its interpretation of the words “any 365-day period,” the Court agreed with Kratovil, explaining that a cause of action for ouster . . . arises if a person covered by the statute moves out of New Jersey for any 365-day period, just as it arises for individuals who remain outside the state after not having taken advantage of the grace period for any 365-day period. Notwithstanding this interpretation, the Court did note an ambiguity in statutory drafting because the second use of the phrase “365-day period” in section (d) of the statute could indicate a “more definitive statute of limitations...maximum.” Despite this ambiguity, the Court reasoned that Kratovil’s interpretation is more in line with the policy goal of requiring New Jersey residency for most public officers and employees.

Pending Bills

There are five bills pending that involve N.J.S. 52:14-7(a). Only one of them specifically addresses the issue in Kratovil concerning the class of persons that the statute should cover. That bill seeks to narrow the class of covered individuals to include only “[t]he Governor, ....the Legislature, the head of each principal department of the Executive Branch of State government, and every Justice of the Supreme Court, judge of the Superior Court, and judge of any inferior court established under the laws of this State.” There are no bills pending that pertain to the timing issue in Kratovil, under N.J.S. 52:14-7(d).

Conclusion

The proposed modifications to N.J.S. 52:14-7(a) are intended to clarify that the New Jersey First Act’s residency requirement does not apply to unpaid volunteers as held in Kratovil v. Angelson.

49 Id. at 498 – 501.
50 Id. at 500.
51 Id; N.J. STAT. ANN. § 52:14-7(d).
52 Id.
53 See Statement to S. 2181, 2024 Leg., 221st Sess. (May 13, 2024) (seeking to eliminate the requirement for State residency of public school employees for a period of three years); See Statement to S. 633, 2024 Leg., 221st Sess. (Jan. 9, 2024) (proposing to eliminate the requirement for public school employees to maintain State residency); See Statement to S. 433, 2024 Leg., 221st Sess. (Jan. 9, 2024) (to eliminate the State residency requirement for mathematics and science public school teachers); See Statement to A. 4307, 2024 Leg., 221st Sess. (May 10, 2024) (to establish an exemption from the State residency requirement for certain public school teachers for two years).
54 Statement to A. 150, 2024 Leg., 221st Sess. (Jan. 9, 2024) (“[t]his bill eliminates the requirement that all public officers and employees, with certain exceptions, have their principal residence in this State”); but see Id. at 495-6 (referencing the 1986 expansion of the previous NJFA where it first began to cover the same class of persons intended by bill A. 150, following a public pledge to reside in state from then-Chief Justice Robert N. Wilentz).
This bill is more broad in its scope than the Commission’s proposal (as contained in the Appendix) and has been introduced in every legislative session since the 2014-2015 session (in the Senate in the 2014-2015 and 2016-2017 sessions and then in both houses of the Legislature beginning in 2018).
55 Kratovil at 520.
APPENDIX

The proposed modifications to N.J.S. 52:14-7(a) are shown below (with strike-through and underlining).

Substantive modifications are reflected under subsection (2) and the remaining modifications are limited to lettering and numbering changes consistent with contemporary drafting standards.

a. (1) Every person holding an office, employment, or position

(1)(A) in the Executive, Legislative, or Judicial Branch of this State, or

(2)(B) with an authority, board, body, agency, commission, or instrumentality of the State including any State college, university, or other higher educational institution, and, to the extent consistent with law, any interstate agency to which New Jersey is a party, or

(3)(C) with a county, municipality, or other political subdivision of the State or an authority, board, body, agency, district, commission, or instrumentality of the county, municipality, or subdivision, or

(4)(D) with a school district or an authority, board, body, agency, commission, or instrumentality of the district,

shall have his or her principal residence in this State and shall execute such office, employment, or position.

(2) This residency requirement shall not apply to any person:

(a)(A) who is employed on a temporary or per-semester basis as a visiting professor, teacher, lecturer, or researcher by any State college, university, or other higher educational institution, or county or community college, or in a full or part-time position as a member of the faculty, the research staff, or the administrative staff by any State college, university, or other higher educational institution, or county or community college, that the college, university, or institution has included in the report required to be filed pursuant to this subsection;

(b)(B) who is employed full-time by the State who serves in an office, employment, or position that requires the person to spend the majority of the person's working hours in a location outside of this State; or
(6) Any person may request an exemption from the provisions of this subsection on the basis of critical need or hardship from a five-member committee hereby established to consider applications for exemptions. The committee shall be composed of three persons appointed by the Governor, a person appointed by the Speaker of the General Assembly, and a person appointed by the President of the Senate, each of whom shall serve at the pleasure of the person making the appointment and shall have a term not to exceed five years. A vacancy on the committee shall be filled in the same manner as the original appointment was made. The Governor shall make provision to provide such clerical,
secretarial, and administrative support to the committee as may be necessary for it to conduct its responsibilities pursuant to this subsection.

(7) The decision on whether to approve an application from any person shall be made by a majority vote of the members of the committee, and those voting in the affirmative shall so sign the approved application. If the committee fails to act on an application within 30 days after the receipt thereof, no exemption shall be granted and the residency requirement of this subsection shall be operative. The head of a principal department of the Executive Branch of the State government, a Justice of the Supreme Court, judge of the Superior Court, and judge of any inferior court established under the laws of this State shall not be eligible to request from the committee an exemption from the provisions of this subsection.

(8) The exemption provided in this subsection for certain persons employed by a State college, university, or other higher educational institution, or a county or community college, other than those employed on a temporary or per-semester basis as a visiting professor, teacher, lecturer, or researcher, shall apply only to those persons holding positions that the college, university, or institution has included in a report of those full or part-time positions as a member of the faculty, the research staff, or the administrative staff requiring special expertise or extraordinary qualifications in an academic, scientific, technical, professional, or medical field or in administration, that, if not exempt from the residency requirement, would seriously impede the ability of the college, university, or institution to compete successfully with similar colleges, universities, or institutions in other states. The report shall be compiled annually and shall also contain the reasons why the positions were selected for inclusion in the report. The report shall be compiled and filed within 60 days following the effective date of P.L.2011, c. 70. The report shall be reviewed, revised as necessary, and filed by January 1 of each year thereafter. Each report shall be filed with the Governor and, pursuant to section 2 of P.L.1991, c. 164 (C.52:14-19.1), with the Legislature, and a report may be revised at any time by filing an amendment to the report with the Governor and Legislature.

(9) As used in this section, “school district” means any local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes and any jointure commission, county vocational school, county special services district, educational services commission, educational research and demonstration center, environmental education center, and educational information and resource center.

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COMMENT

The proposed language is added to N.J.S. 52:14-7(a) as list item “D” in subsection (2) of the statute to emphasize that the statute’s residency requirement does not apply to unpaid volunteers as established in Kratovil v.
The language is added to subsection (2) of this section because subsection (2) lists items “A-C” detailing other instances where the residency requirement does not apply. Minor grammatical changes are proposed to the existing list item “C” to accommodate the proposed addition of list item “D”.

The proposed language reflects the Kratovil Court’s conclusion that the New Jersey First Act “should not be interpreted to reach unpaid volunteers[.]”

The non-substantive recommendation to include the numbering of subsections (1)-(9) and the lettering of listed items “A-D” are proposed for the purpose of making the statutory text more accessible, consistent with contemporary drafting practices.

57 Id. at 520; N.J. STAT. ANN. § 52:14-7(a) (West 2024).
58 Id.